

SUPREME COURT OF THE STATE OF MONTANA

The Milky Whey, Inc. v. Dairy Partners, LLC

2015 MT 18, 378 Mont. 75 (2015) · No. DA 14-0013 · Decided January 27, 2015

SUMMARY

The Montana Supreme Court affirmed dismissal of Milky Whey’s claims against Dairy Partners and Scott Stefan for lack of personal jurisdiction. The court held that Dairy Partners did not waive its jurisdictional defense by filing a notice of appearance before moving to dismiss, and that its contacts with Montana did not satisfy Montana’s long-arm statute. The court concluded that the transaction at issue occurred outside Montana and that no further due process analysis was necessary.

CASE DETAILS

COURT	Supreme Court of the State of Montana
WRITING FOR THE COURT	Justice Beth Baker; Beth Baker; Laurie McKinnon; Patricia Cotter; James Jeremiah Shea; Jim Rice
JURISDICTION	Montana
DECIDED	January 27, 2015
DOCKET	DA 14-0013
DISPOSITION	affirmed
PROCEDURAL POSTURE	Direct appeal from dismissal of the action for lack of personal jurisdiction.
STANDARD OF REVIEW	De novo review of a district court's ruling on a motion to dismiss for lack of personal jurisdiction, construing the complaint in the light most favorable to the plaintiff.
PRECEDENTIAL VALUE	Published Montana Supreme Court opinion; precedential.
PARTIES	The Milky Whey, Inc. v. Dairy Partners, LLC, Scott Stefan

TOPICS

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PRACTICE AREAS

[civil procedure](#) [commercial litigation](#) [contracts](#) [appellate procedure](#)

QUESTIONS PRESENTED

1. Whether Dairy Partners waived its personal-jurisdiction defense by filing a notice of appearance before moving to dismiss.
2. Whether Montana's long-arm statute conferred general or specific personal jurisdiction over Dairy Partners based on the parties' commercial dealings and the disputed transaction.

HOLDINGS

1. A notice of appearance is not a pleading and does not waive a personal-jurisdiction defense when the defendant raises that defense by motion before filing a responsive pleading.
2. Montana did not have general personal jurisdiction over Dairy Partners because the company was not a Montana corporation and did not conduct substantial, systematic, or continuous activities in Montana.
3. Montana's long-arm statute did not confer specific personal jurisdiction over Dairy Partners because the claims did not arise from Dairy Partners' transaction of business or tortious conduct in Montana.

KEY QUOTATIONS

“A notice of appearance serves to direct any additional filings to the defendant’s attorney; it is not a pleading and does not acquiesce to the jurisdiction of the court unless it is joined with some other motion or responsive pleading.” (§ 15)

“Milky Whey’s claim does not arise from Dairy Partners’ transaction of business within this state simply because Milky Whey happens to be a Montana business.” (§ 35)

FACTUAL BACKGROUND

Milky Whey is a Montana dairy broker, and Dairy Partners is a Minnesota dairy supply company. From 2010 to 2013, the companies completed nine purchase orders worth more than \$181,000, principally through telephone, fax, or email communications. In the disputed transaction, Milky Whey initiated the purchase of Swiss Trim, prepaid \$12,500 from Montana, and arranged for the product to be shipped to Utah, where it discovered that the product was moldy; none of the product entered Montana.

PROCEDURAL HISTORY

Milky Whey sued Dairy Partners and Scott Stefan in Montana state court for breach of contract, breach of warranty, unjust enrichment, and breach of an obligation to pay. The defendants filed a notice of appearance, then moved to dismiss for lack of personal jurisdiction before filing a responsive pleading. The Fourth Judicial District Court for Missoula County granted the motion and dismissed the action. The Montana Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Grizzly Sec. Armored Express, Inc. v. Armored Grp., LLC, 2011 MT 128, ¶ 12, 360 Mont. 517, 255 P.3d 143
- El Dorado Heights Homeowners' Ass'n v. Dewitt, 2008 MT 199, ¶ 16, 344 Mont. 77, 186 P.3d 1249
- Spencer v. Ukra, 246 Mont. 430, 433, 435, 804 P.2d 380, 382, 384 (1991)
- Spiker Communs. v. State ex rel. DOC, 1998 MT 32, ¶¶ 13-14, 287 Mont. 345, 954 P.2d 1145
- Wamsley v. Nodak Mut. Ins. Co., 2008 MT 56, ¶ 27, 341 Mont. 467, 178 P.3d 102
- Michelson v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 709 F. Supp. 1279, 1283 (S.D.N.Y. 1989)
- Threlkeld v. Colorado, 2000 MT 369, ¶ 9, 303 Mont. 432, 16 P.3d 359
- International Shoe Co. v. State of Washington, International Shoe Co. v. Washington, 326 U.S. 310, 66 S. Ct. 154 (1945)
- McGee v. Riekhof, 442 F. Supp. 1276, 1278 n.1 (D. Mont. 1978)
- Bird v. Hiller, 270 Mont. 467, 472-73, 892 P.2d 931, 934 (1995)
- B.T. Metal Works v. United Die & Mfg. Co., 2004 MT 286, ¶¶ 17, 25-29, 323 Mont. 308, 100 P.3d 127
- Spectrum Pool Prods., Inc. v. MW Golden, Inc., 1998 MT 283, ¶¶ 4, 11, 291 Mont. 439, 968 P.2d 728
- Nelson v. San Joaquin Helicopters, 228 Mont. 267, 270, 272, 742 P.2d 447, 448, 450 (1987)
- Simmons v. State, 206 Mont. 264, 279-80, 670 P.2d 1372, 1380 (1983)
- Zippo Mfg. Co. v. Zippo DOT Com, Inc., 952 F. Supp. 1119 (W.D. Pa. 1997)
- Walden v. Fiore, Walden v. Fiore, 571 U.S. 277, 284, 134 S. Ct. 1115, 1121-22 (2014)
- Great Plains Crop Mgmt. Inc. v. Tryco Mfg. Co., Inc., 554 F. Supp. 1025, 1027